

MINUTES

MONTANA SENATE 56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By **CHAIRMAN WILLIAM CRISMORE**, on February 8, 1999
at 3:10 P.M., in Room 405 Capitol.

ROLL CALL

Members Present:

Sen. William Crismore, Chairman (R)
Sen. Dale Mahlum, Vice Chairman (R)
Sen. Vicki Cocchiarella (D)
Sen. Mack Cole (R)
Sen. Lorents Grosfield (R)
Sen. Tom Keating (R)
Sen. Bea McCarthy (D)
Sen. Glenn Roush (D)
Sen. Mike Taylor (R)
Sen. Bill Wilson (D)

Members Excused: Sen. Ken Miller (R)

Members Absent: None.

Staff Present: Larry Mitchell, Legislative Branch
Jyl Scheel, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 316, 2/20/1999; SB 362,
2/20/1999; SB 386, 2/20/1999
Executive Action: None

HEARING ON SB 316

Sponsor: SENATOR LINDA NELSON, SD 49, MEDICINE LAKE

Proponents:

SENATOR GERRY DEVLIN, SD 2, TERRY
Steve Browning, Montana Hospital Association - written testimony

Opponents: None.

Opening Statement by Sponsor:

SENATOR LINDA NELSON, SD 49, MEDICINE LAKE, stated the grief the legislature has experienced over federal and state underground storage tank laws, started with registering all underground storage tanks in the early 1980's in compliance with EPA standards. Tanks that store fuel for heating businesses were missed when exempting other tanks from regulation because of the assumption that tanks under commercial buildings were regulated by EPA. Actually, it was only commercial tanks that contained heating oil for sale that were deregulated.

She is asking that the state be taken out of the business of regulating these tanks and the law backed up to December 22, 1998, so these businesses are not liable for fines and can continue to use their tanks if they so choose. The law reads the tanks were to be out of use by 12/22/98 but have until 12/22/99 to actually have them out of the ground. This has been coming for 10 years so many owners have their tanks upgraded. They qualify for remedial funds that are available if there has been or is a leak.

If the owner has a tank that is still in the ground and has not responded to the mandate to stop using it, he or she will not be fined or reprimanded in this bill. Neither will they be able to collect anything from the remedial fund if the time comes and they take the tank out. The amendments address these issues.

EXHIBIT (nas31a01).

Proponents' Testimony:

SENATOR GERRY DEVLIN, SD 2, TERRY, spoke in support of **SB 316**. In 1993 he stood before this committee with a bill for underground fuel tanks and was under the assumption it covered underground storage tanks as well, but it did not. At that time his objective was to get these tanks out of the ground and out of the way before they did start to leak to ensure a safer environment. It would provide a window of opportunity for those who want to stay in this program to keep their tank. If they do not, they can get rid of it. The federal government has never said noncommercial tanks of 1100 gallons and under should be covered. The state got overzealous way back and covered everything up. He strongly encouraged a DO PASS recommendation.

Steve Browning, Montana Hospital Association, delivered written testimony as per **EXHIBIT (nas31a02)**.

Opponents' Testimony: None**Informational Testimony:**

Denise Mills, Remediation Division Administrator, Department of Environmental Quality, stated her division administers the underground storage tank program. The amendments provide an avenue for heating oil tank owners wanting to have access to the petroleum storage tank cleanup fund, such as a school. A general population of about 195 tanks would be affected by the bill. It covers only heating oil tanks that contain fluids that would be used only on the premises, not retail use. Of those, about 98 tanks have been temporarily closed which means they can be upgraded or permanently closed this year by December, 1999. The other tanks would be required to be upgraded before the end of the year. The volumes of those tanks are largely between 4,000 and 10,000 gallons. The overall range is between 500 and 20,000 gallons. This regulation covers a large range of sizes of tanks. Currently the Montana Underground Storage Tank Act requires a spill or leak to be reported within 24 hours of being discovered for abatement measures to be taken. It also requires the owners to have permits to install or remove tanks or to make repairs on these tanks for foreclosure activities. Releases are usually found and recorded during these activities. She is not standing in support or opposition to the bill but merely providing helpful information to the committee in order to make this policy decision.

Questions from Committee Members and Responses:

SENATOR TAYLOR questioned the fiscal note. What is her best estimate on the cost? **SENATOR NELSON** felt they were not on the same level of communication when the fiscal note was prepared and that is why she did not sign it. She felt they would opt into the program. **SEN. TAYLOR** stated the bill says heating oil not diesel fuel. Would there be a problem if someone used diesel fuel and included that instead? **SEN. NELSON** directed the question to **Ms. Mills** who stated diesel fuel was one source of heating oil used in this process.

SENATOR COCCHIARELLA stated her concern about the effect of local revenues and the lack of protection under this program. She wondered if the amendments would make it clear and address the issue in the fiscal note? **SEN. NELSON** stated she thought it would. Local governments do not have a problem with opting in. Her main concern is the business owner who has a tank they want to continue using. She wants to let them off the hook to continue using it. **SEN. COCCHIARELLA** referred to "letting them off the hook". **SEN. NELSON** stated there are probably 52 tanks

that are not in compliance now and about 20% of those tanks may be a problem. **SEN. COCCHIARELLA** asked what the business owner would do when there was a problem? What is going to guarantee they clean it up and they are not allowed to pollute the whole aquifer? **SEN. NELSON** said she assumed they would do the honorable thing and clean it up as well as doing a good job of cleaning it up.

SENATOR GROSFIELD wanted clarification on what was heating oil. Diesel fuel is one source of heating oil, correct? **Ms. Mills** stated that was correct. Other sources might be a used oil that has been cleaned and refined. **SEN. GROSFIELD** stated this bill covers diesel fuel but only if used in place for heating oil. **Ms. Mills** stated if it was used for consumptive use on the premises. **SEN. GROSFIELD** referred to a previous question about contamination. Does not most of this heating oil biodegrade over a relatively short period of time? **Ms. Mills** stated different types of oil will degrade at different rates and some fairly quickly. At a minimum meaning a number of years. **SEN. GROSFIELD** asked about the relationship between Sections 2, 3 and 4 of the bill. There is a savings clause, an effective date and retroactive applicability date. The effective date is passage and approval, for instance 4/9/99. Then it says this act applies retroactively for tanks in use after 12/22/98. The bill contemplates there are tanks being used that are basically illegal right now. The savings clause says, "this act does not affect penalties incurred or proceedings begun before the effective date of this act." He assumes in order to allow usage of the tanks after 12/23 they would have to face a penalty until the effective date. Is that right? **Ms. Mills** stated his interpretation was correct. The savings clause was meant to see that those tanks which are out of compliance today and have been since 12/23 are essentially protected from fines. That was the intent of the Sponsor. They do have a couple of compliance orders in place for heating oil tanks right now where they have signed compliance agreements with the owners. They are subject to penalties and fines but have also agreed to a schedule by which to upgrade their tanks. Her greater concern would be whether those orders issued would have to be rescinded under the savings clause or if this has a broader effect. She believed it was the opinion of their legal counsel that the orders issued would stand. **SEN. GROSFIELD** stated since the effective date is not until April and they became illegal on 12/23/98, we are trying to protect those people with this bill. Is there not a window of four months where you could fine them even if this bill is passed? **Ms. Mills** stated she thought the answer was yes that they would continue to work under the authority of the current law until this bill became effective.

SENATOR GROSFIELD asked what the intention was for this four month period of time. **SEN. NELSON** stated **Larry Mitchell** may better answer the question. She thought if the Department was already working and had applied some penalties that those would stand. They would not be negated.

SENATOR MAHLUM referred back to the business owner who has a tank in his basement. If he ceases to use the tank but it is too large he cannot get it out of the building, is that tank referred to as temporarily closed? **Ms. Mills** stated temporary closure is a process that the Department and tank owners work together to establish dates when the tank was put into temporary closure. Once it is put into temporary closure the owner has 12 months from that date to permanently close it. The scenario described would be viewed as permanently closed but perhaps improperly closed because they do not know if it has been filled with sand, etc.

SENATOR GROSFIELD asked if the two enforcement actions referenced earlier had begun before 12/22 or after. **Ms. Mills** stated both were after 12/22. One was as recently as last week.

Closing by Sponsor:

SENATOR NELSON stated over the years, this has been a difficult situation. A lot of the owners do not have any other fuel to use besides heating fuel. These people need to be able to fill their tanks and even if it is not a school or a business, they need to have fuel, and need to continue to do business as usual. She hopes the committee will see that these people should not be punished. She handed out a status sheet on heating oil tanks **EXHIBIT (nas31a03)**.

{Tape : 1; Side : A; Approx. Time Counter : 0 - 25.9; Comments : None.}

HEARING ON SB 376

Sponsor: **SENATOR BEA MCCARTHY, SD 29, ANACONDA**

Proponents:

Mike Foster, Montana Contractors Association
Jerry Driscoll, Montana Building Construction Trades Council
Bill Snoddy, McDonald Gold Project and Montana Mining Association
Chris Gallus, Montana Chamber of Commerce

**Evan Baird, Butte Local Development Corporation and Ananconda
Local Development Corporation
Joe Jordan, Jordan Contracting**

Opponents:

**Lois Menzies, Director, Department of Administration
Denise Mills, Remediation Division Administration, DEQ
Beth Baker, Justice Department
Joe Griffin, QST Environmental, Butte
Randy Huffsmith, Director of Montana Operations of Camp, Dresser
& McKee, Professional Engineer**

Opening Statement by Sponsor:

SENATOR BEA MCCARTHY, SD 29, ANACONDA, presented SB 376. The bill can be summed up in three words - jobs, jobs, and jobs. Potentially it is \$215 million worth of jobs from the current natural resource damage lawsuit. Another \$200 million could eventually provide work for Montanans. This bill is about ensuring that qualified, experienced and responsible Montana resource damage claim contractors do not get pushed aside by foreign corporations. It puts our own neighbors first during difficult economic times and getting qualified Montana people to do the job. The bill has three components: a) it provides a natural resource damage services resident bidder preference of 7% over the lowest non-resident bidder, b) it provides preference to a bidder with documented knowledge of the area within 100 mile radius of the natural resource damage as designated by the court settlement, c) it provides restriction on a public agency entering into a contract for natural resource damage services with a foreign country bidder.

Proponents' Testimony:

Mike Foster, Montana Contractors Association, stated he had received calls from several members of the association and, regardless of where they stood on the bill, they all asked him to thank **SEN. MCCARTHY** for thinking of Montana Contractors. MCA strongly supports the free enterprise system and the competitive bid system. Anytime you are asked to establish preferences, there are a lot of factors to consider and therefore concerns the committee will need to address. For instance, some Montana contractors do a lot work in other states and even foreign countries. They would be quite upset if this bill were to be used against them when bidding on projects in other states. He does not feel that is the sponsor's intent to cause problems in that regard. The 100 mile restriction is done in such a way that

almost any contractor in Montana who has done public works construction would be eligible to bid for this job.

This bill may need some fine tuning along the way but the concept has great merit. There is a common sense argument that a contractor familiar with the area has a greater chance of success in completing the project than a contractor totally unfamiliar with the area and all of its nuances. The portion of Section 2 dealing with bidders from foreign countries is designed to create an arena of fair trade not just free trade. The concepts seem reasonable and they encouraged a DO PASS.

Jerry Driscoll, Montana Building Construction Trades Council, said if the Montana contractor gets the work then the Montana construction workers normally get the work. He supports the bill because it is not only good for contracting business but also good for construction workers.

Bill Snoddy, McDonald Gold Project and Montana Mining Association, spoke in support of **SB 376** and stated it is a very positive step for Montana and Montana contractors. It gives the people who have pride of ownership in their state to have the ability to work within their state to restore and reclaim those things which are theirs.

Chris Gallus, Montana Chamber of Commerce, stated their support of **SB 376**. It does provide some special treatment but it is special treatment for people that deserve it.

Evan Baird, Butte Local Development Corporation and Ananconda Local Development Corporation, stated this bill is about a lot of money. The first settlements are for \$215 million. By the time they are expended and the interest is expended it will gain another approximately 50% to exceed \$300 million. There are three more settlements still to be finalized which will be funded by the legislature for another approximately \$200 million. Out of state firms can smell that money all the way across the Atlantic and will come in to do the contract work instead of Montana qualified firms doing that work. These jobs pay good money and benefits. This bill is not a guarantee of money for Montana firms and contractors but it does establish a little preference at 7%. This imposed preference is not dissimilar to the preference that exists today for other public contracts. He passed out information from the State of Utah regarding a Statement of Interest and Statement of Qualifications (SOI/SOQ) to obtain Environmental Engineering Consultants **EXHIBIT (nas31a04)** showing firms based in Utah will be given a maximum of 10 points preference for geographic availability. They feel amendments need to be added to the bill which not only applies to the bid

portion of the statutes but also applies to the other recognized non-bid methodologies for grant and work in the State of Montana.

The issue is good public policy, the Montana economy, Montana jobs and income. This is one vote the legislature can make that will likely lead to more and better jobs for Montanans perhaps as much as \$500 - \$600 million over the next 15 years. They urge the committee's indulgence to work with the other agencies and interested parties to tweak the bill.

Joe Jordan, Jordan Contracting, spoke in support of the bill. They have been doing a lot of reclamation work around Butte, Anaconda and Deer Lodge. They have witnessed in the past that just because an out of state firm or a larger corporation is doing the job does not increase the quality of the job. This is a real opportunity to do something besides just talk about getting jobs for Montanans. There are people in Montana who are very qualified to do this work and an opportune time for Montana contractors to hire Montana people.

{Tape : 1; Side : A; Approx. Time Counter : 25.9 - 45; Comments : None.}

Opponents' Testimony:

Lois Menzies, Director, Department of Administration, spoke in opposition to **SB 376** as per **EXHIBIT(nas31a05)**.

Denise Mills, Remediation Division Administor, DEQ, spoke in opposition to the bill. They concur with the concerns expressed by the Department of Administration as well as some additional specifics. **SB 376** appears to apply to remediation activities as well as natural resource damage restoration work. DEQ is currently performing remediation activities as a lead agency for two federal superfund projects in Montana. Even though they are the lead agency for these actions they still obtain EPA approval for all their activities and must comply with certain federal requirements for procurement. If they are placed in a position where state law requires them to take certain actions in procuring contractors and those actions are not permissible under federal law or not acceptable to EPA, they could find themselves in a stalemate which would prevent them from moving forward on these projects. Since the law could not be changed for another two years, they could even find the state losing its control over these projects. Both the geographic preference and the experience requirements of this bill would cause problems with DEQ's ability to proceed at these superfund sites. In addition EPA has expressed concerns over the effect of this bill on DEQ's cost estimates for these projects with the 7% preference and

potential litigation costs. They encourage the committees careful consideration of the consequences of this bill.

Beth Baker, Justice Department, rose reluctantly in opposition to this bill. They are chiefly responsible for the litigation against ARCO and part of that litigation and the resulting settlement has been restoration planning. They are concerned that this bill 1) may raise the costs of the restoration. 2) They may lose some continuity if the bill results in losing consultants they have been using throughout the litigation who may not be able to be hired under the restoration planning phase. 3) The bill does not comport with their agreements with EPA under the settlement. They also agree the language of the bill is unclear in that it appears to require competitive bids where competitive bids would not be required under existing law.

Joe Griffin, QST Environmental, Butte, spoke in opposition to the bill as per **EXHIBIT (nas31a06)**.

Randy Huffsmith, Director of Montana Operations of Camp, Dresser & McKee, and Professional Engineer, stated this bill, if enacted and depending upon how resident is defined, will damage Montana taxpaying residents who work for companies that are not incorporated in Montana. Many companies have a substantial presence in Montana and employ people who live in Montana and are part of the local communities but their companies simply chose not to incorporate in Montana. They urge this committee not to support a bill that could jeopardize the jobs of Montana residents and taxpayers who work for corporations not incorporated in Montana.

{Tape : 1; Side : B; Approx. Time Counter : 0 - 13.3; Comments : None.}

Questions from Committee Members and Responses:

SENATOR COLE questioned if this bill was passed would it jeopardize the federal dollars that may be coming in? **Ms. Menzies** stated she thought that was a possibility. **SENATOR MCCARTHY** added that it was her understanding that this was not federal money. It comes from a settlement and belongs to the state and therefore is no longer federal monies.

SENATOR COLE asked what was meant by a resident natural resource contractor within a 100 mile radius. If there was not a contractor within the 100 mile radius, would they be considered the same as an out of state contractor? **Ms. Menzies** agreed they would be considered in a similar manner as a non-resident bidder. **SEN. COLE** asked where preferences like minority preferences fit

into this 100 mile radius plan. **Ms. Menzies** stated the 3% resident preference would apply to those outside the 100 mile radius. What they are unclear about is whether or not that would also apply to those who have experience within the 100 mile radius and in which cases would that be 7% or 10%. It is her understanding that those businesses which are incorporated in the state would be eligible for 7% preference irregardless of whether they have experience in the 100 mile radius or not. **SEN. COLE** asked would a minority contractor be eligible for their minority preference if they had no experience within 100 miles? **Ms. Menzies** referred the question to **Brad Sanders, Contracts Officer for the Department of Administration**, who stated there were certain federal requirements that handle **Minority Business Enterprise/Women Business Enterprise (MBE/WBE)** preferences and they currently do not work with too many of those. If there was federal money and they had that preference, those contractors would not be able to receive this. **SEN. COLE** questioned if this followed down to subcontractors also? **Ms. Menzies** stated she thought this preference applied to the services and would apply to the contractor and not necessarily the subcontractor.

SENATOR GROSFIELD questioned who the 3% - 5% retaliatory preference would apply to? **Ms. Menzies** stated because we have a 3% Montana preference, when a Montana resident competes in another state, they are penalized by adding 3% to the bill. **SEN. GROSFIELD** stated with or without this bill Montana is getting a 3% retaliatory preference on any Montana business that goes to Wyoming? **Mr. Sanders** stated that preference is applied only to Title 18-2 which is the Construction Laws. Purchase of goods and services which are under 18-4 do not have that preference. **SEN. GROSFIELD** questioned since it is 3% now, if we go to 7%, will that also go to 7%? **Mr. Sanders** stated if a non-Montana company was assessed a 7% penalty, then a resident Montanan would be assessed 7% in that same state.

SENATOR ROUSH understands this bill only pertains to the Butte-Silverbow area for the ARCO cleanup? **Ms. Menzies** said that was her understanding. **SEN. ROUSH** questioned with the 100 mile radius preference, could there not be a court challenge by another Montana based contractor? **Ms. Menzies** describes this as a preference within a preference. She is not aware this situation has arisen before, so is not aware that they have ever been challenged in that area. She was not sure how to answer the question.

SENATOR ROUSH questioned if there was not a conflict of interest for a Montana contractor that lived outside the 100 mile radius to be able to bid on the project? **SEN. MCCARTHY** stated in

preparing the bill she worked with the Montana Contractors Association and most of the contractors that do this type of work are within that radius. She would be willing to amend that, however.

SENATOR WILSON stated it is important to understand that the 100 mile radius is not where the Montana contracting company resides, it is whether or not the construction company has actually performed work within that 100 mile radius. We would find that every major construction company in Montana has performed some sort of work that would qualify under this bill to allow them to bid on this work.

SENATOR CRISMORE questioned what if it were a fairly new company just formed to do that work who had been working on a cleanup at Libby, would they be out of it? **SENATOR WILSON** stated that was a good point and unless they had actually performed some work within that 100 mile radius they would not be qualified to bid. They could try to become a subcontractor under the general.

SENATOR MAHLUM questioned if a Montana contractor was quite certain that an Idaho contractor was going to bid \$10 million on a project, could the Montana contractor bid \$10,700,000 and then possibly with the 3% add another \$300,000 and still get the contract? **Ms. Menzies** stated yes a Montana resident contractor could bid 7% higher than the next qualified bidder and if the 3% applies, it could be as much as 10% more.

Closing by Sponsor:

SENATOR BEA MCCARTHY, SD 29, ANACONDA, thanked the committee for the good hearing. The two projects **Ms. Mills** referred to are the two projects she referred to that both went to out of state contractors, both wound up coming in over bid and, in her opinion, they are both a mess. She is trying to prevent that with this bill. She has contractors that will do a good job, she wants contractors who know Montana, and contractors that are willing to pay good wages. She does not want contractors that pack up their equipment when the weather gets cold because they are unprepared for it. This is a jobs bill and a Montana bill. There is no way to go but to pass it.

****NOTE: Ms. Menzies** submitted a letter to the committee on February 10 correcting a factual error presented during testimony as per **EXHIBIT(nas31a07)**.

{Tape : 1; Side : B; Approx. Time Counter : 13.3 - 27; Comments : None.}

HEARING ON SB 362

Sponsor: SENATOR TOM KEATING, SD 5, BILLINGS

Proponents

Thomas P. Richmond, Administrator, DNRC Board of Oil and Gas Conservation, mailed written testimony as per **EXHIBIT**(nas31a08).

Opponents: None.

Opening Statement by Sponsor:

SENATOR TOM KEATING, SD 5, BILLINGS, stated SB 362 deals with surety bonds for plugging oil and gas wells. In this case, it is primarily for the plugging of gas wells that have been turned over to a private owner. Ownership of some wells that still have a little bit of gas flow is transferred to the landowner instead of being plugged. The owner can then take title and use the gas to heat his home and outbuildings until the flow is depleted. When the reservoir is finally depleted, it is his obligation to plug that well according to state standards.

The opportunity for that person to do this is possible in the statutes now but in order to take over the well and get an assignment of the permit to drill, the owner of the property has to either put up a certificate of deposit or a cash amount of \$10,000. Sometimes that person does not want to tie up his capital in a certificate of deposit. This bill will amend the statutes to allow him to provide a surety bond in the amount necessary to plug the well. This will avoid orphan wells. The new bonding is a \$50,000 blanket bond, a \$1,500 bond for shallow wells, a \$5,000 bond down to 3500 feet and \$10,000 single well for anything deeper than 3500 feet. Since these wells are usually 1500' to 1800' deep, a \$1500 surety bond would most likely be adequate for the plugging of that well. He encourages a DO PASS.

Questions from Committee Members and Responses:

SENATOR MAHLUM said being from the western part of the state it is hard for him to believe that someone would have an oil or gas well 100 feet away from their home and use it like this.

SEN. KEATING stated shallow oil wells used to be drilled in people's front yards. The only time an owner would want to take over a well is if it is gas because it is much cleaner, easier to handle and is low pressure. In the highline area there are gas wells drilled within 300-400 feet of the farmstead. SEN. MAHLUM

questioned how many wells this would effect. **SEN. KEATING** responded it would be minimal, maybe 50 at the most.

SENATOR CRISMORE stated there were several letters from the oil and gas people that have come in supporting this measure.

Closing by Sponsor:

SENATOR TOM KEATING, SD 5, BILLINGS, stated this process has been approved by the DNRC Board of Oil and Gas Conservation. They have stated it would be preferable to them to have surety bonds rather than Certificates of Deposit, cash or letters of credit. They are in full support of a DO PASS recommendation.

SENATOR MAHLUM stated he would propose we do executive action on **SB 362.** **SENATOR COCCHIARELLA** stated she had requested information on numbers of these kinds of wells and wells related to other issues from the Board of Oil and Gas and would like to hold off on executive action until she has a chance to review the information.

{Tape : 1; Side : B; Approx. Time Counter : 27 - 39; Comments : None.}

ADJOURNMENT

Adjournment: 4:40 P.M.

SEN. WILLIAM CRISMORE, Chairman

JYL SCHEEL, Secretary

WC/JS

EXHIBIT (nas31aad)